CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 322

THE SEMINOLE NATION, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED AUGUST 21, 1942.

CERTIORARI GRANTED OCTOBER 19, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 322

THE SEMINOLE NATION, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
History of proceedings	1	1
Amended petition	3	2
Demurrer to amended petition	19	11
Argument and submission of case	21	11
Order of court sustaining demurrer and dismissing petition	21	11
Judgment	23	12
Clerk's certificate (omitted in printing)	25	
Order allowing certiorari	26	12

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 24, 1942.

—1775

[fol. 1]

IN THE COURT OF CLAIMS OF THE UNITED STATES

No. L-88

THE SEMINOLE NATION

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

The original petition was filed March 21, 1930.

On April 30, 1930, a general traverse was filed by defendant.

On November 30, 1931, on motion made therefor and allowed by the court, the defendant filed a demurrer.

On December 8, 1931, the case was argued and submitted on defendant's demurrer to petition.

On May 2, 1932, the court filed an Order overruling without prejudice the defendant's demurrer to petition.

On May 5, 1932, a general traverse was filed by defendant.

On June 4, 1932, the defendant filed a motion to require [fol. 2] the plaintiff to make petition more definite and certain.

On June 16, 1932, the defendant filed a motion for rehearing on its demurrer to petition.

On August 26, 1932, the defendant's motion to make petition more definite and certain was order to the Law Calendar for oral argument.

On October 10, 1932, the case was argued and submitted on defendant's motion to make petition more definite and certain.

On November 14, 1932, the court filed an Order allowing defendant's motior for a new trial, sustaining defendant's demurrer to petition and dismissing said petition.

On November 25, 1932, plaintiff filed a motion to reinstate case and to permit same to be argued on demurrer, and said motion was allowed by the court on December 8, 1932.

On February 14, 1933, on motion made therefor, and allowed by the court, the plaintiff filed its amended petition [fol. 3] which is as follows:

II. Amended Petition—Filed February 14, 1933

(Original Petition filed March 21, 1930)

To the Honorable the Court of Claims:

The plaintiff, the Seminole Nation, respectfully represents:

That for its first cause of action the plaintiff states:

I

That by a certain Act of Congress, approved May 20th, 1924 (43 Stat. 133, as modified by Joint Resolution approved May 19, 1926, 44 Stat. 568, giving permission to [fol. 4] file separate petitions, and Joint Resolution of February 19, 1929, 45 Stat. 1229, extending the time for filing suits until June 30, 1930), plaintiff was authorized and empowered to bring this action.

II

That by a treaty made on the 21st day of March, 1866 (14 Stat. 785), between the United States and the Seminole Nation, said Seminole Nation became owner in fee of certain lands now within the boundaries of the State of Oklahoma, which constituted its National Domain; that by said treaty said National Domain was solemnly guaranteed by the United States to said Seminole Nation.

III

That Article V of said Treaty of 1866 granted a right-of-way from east to west or south through the Seminole National Domain. Said Article V provides in part as follows:

"The Seminole Nation hereby grants a right-of-way through their lands to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point on their eastern to their western or southern boundary;"

That thereunder it became the duty of defendant to supervise the grant of said right-of-way to said railroad [fol. 5] company duly authorized by Congress to construct a road through the Seminole National Domain; to execute

properly the provisions of said Article V; and to protect plaintiff in the quiet possession of the lands of its National Domain not so granted, as provided by Article I of said Treaty of 1866.

IV

That under said Article V, the Atlantic and Pacific Railroad Company was authorized to construct a line of railroad from the east line of the Seminole National Domain to the west or south line thereof.

That all rights of said Atlantic and Pacific Railroad Company were assigned to the St. Louis and San Francisco Railroad, and that said last named company constructed said line of railroad. That in constructing said line of railroad, it appropriated as a right-of-way therefor, a strip of land 200 feet wide, extending from said east line of the Seminole National Domain to the south line thereof.

V

That defendant, in violation of its duties under said Article V, and of the rights of the plaintiff to lands of its National Domain so guaranteed under said Treaty of 1866, permitted said railroad company to stake out what are known as "station reservations" along its said 200 feet of [fol. 6] right-of-way. That said reservations consist of an additional strip of land on each side of said right-of-way, each of said reservations containing approximately 20 acres, which were unauthorized and unlawful intrusions upon the lands of the Seminole National Domain.

VI

That said additional lands so staked out as above described were not necessary to the right-of-way of said railroad company or to the operation of its said railroad; that said lands were not granted or ceded by said Seminole Nation under said Article V of said Treaty of 1866; and that the staking out of each of said "station reservations," above described, was an unauthorized intrusion by said railroad company upon the lands of said Seminole Nation, permitted by defendant.

VII

That said railroad company has never used, and is not now using, said lands for the purposes of operating its said

railroad, but due to defendant's neglect of duty as aforesaid, has rented and is now renting the same for meadows, farm land, and, where said "station reservations" are in cities and towns, has leased the same for business purposes unconnected with the operation of said railroad company, and has caused to be erected thereon, stores, warehouses, lumber yards, and other mercantile houses entirely uncon- [fol. 7] nected with the operation of said railroad company, renting the same to tenants and deriving a profit therefrom.

VIII

That after a thorough investigation and diligent search plaintiff is unable to find records in the Department of the Interior accurately describing the number of the several "station reservations" and is informed and believes and therefore avers that the only record accurately describing the number and location of each of said reservations was a certain book formerly in the Office of the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma, which said book, plaintiff is informed and believes and therefore avers, is lost and destroyed. But that the location and number of said reservations are well known to certain officers and agents of defendant and that said reservations are well defined by marks and boundaries along said right-of-way, and can be readily located upon the taking of proof in this case.

IX

That said intrusions by said railroad company upon the said Seminole National Domain, so permitted by defendant, were violations of the rights of plaintiff under Article V of said Treaty of 1866; that by defendant's failure to execute properly its duties thereunder the plaintiff has been deprived of the quiet possession and enjoyment of said lands provided for in Article I of said Treaty of 1866; [fol. 8] and that defendant, well knowing the facts as above set forth, has failed, neglected and refused to put plaintiff in possession of same, and therefore is liable for the damage resulting to plaintiff from defendant's failure to perform properly its obligations under said Treaty of 1866.

PLAINTIFF'S SECOND CAUSE OF ACTION

That for its second cause of action plaintiff states:

I

That plaintiff restates and repleads Paragraphs I and II of its first cause of action.

II

That under the general provisions of the Act of Congress, approved February 28, 1902 (32 Stat. 43), other railroad companies desiring to construct lines through the Seminole National Domain were authorized to appropriate rights-of-way under the conditions prescribed therein. Thereunder it became the duty of defendant to supervise the grants of said rights-of-way to said railroad companies constructing lines of road through the Seminole National Domain, and to execute properly the provisions of said act.

III

That in addition to the railroad provided for in plaintiff's first cause of action, certain other railroad companies acquired rights-of-way of 200 feet in width through the [fol. 9] Seminole National Domain, under the terms of said Act of February 28, 1902, which said roads are particularly described as follows, to-wit:

A certain railroad, now the Missouri, Kansas and Texas Railroad Company, extending from a point on the western boundary, in and through said Seminole Nation to the southern boundary thereof; and a certain railroad now known as the Chicago, Rock Island and Pacific Railroad Company; extending from the eastern boundary of said Seminole Nation to the western boundary thereof.

IV

That defendant in disregard of the provisions of said Act of February 28th, 1902, and of the rights of the plaintiff, and in violation of its covenant to guarantee to the plaintiff the quiet possession of its National Domain under the provisions of said Treaty of March 21st, 1866, permitted each of said railroad companies to stake out what are

known as "station reservations" along said 200 feet of rights-of-way. That said reservations consist of an additional strip of land on each side of said rights-of-way, each of said reservations containing approximately 20 acres, which were unauthorized and unlawful intrusions upon the lands of the Seminole National Domain.

[fol. 10]

V

That said additional lands so intruded upon as above described, were not necessary to the rights-of-way of said railroad companies or to the operation of their said railroads; that said lands were not granted under said Act of February 28th, 1902; and that the staking out of each of said "station reservations" above described, was an unauthorized intrusion by said railroad companies upon the lands of said Seminole Nation, permitted by defendant.

VI

That plaintiff restates and repleads Paragraphs VII and VIII of its first cause of action, so as to make said facts applicable to each of the above named roads.

VII

That said intrusions by said railroad companies upon the said Seminole National Domain, so permitted by the defendant, were violations of the rights of the plaintiff under the said Act of February 28th, 1902; that by defendant's failure to execute properly its duties thereunder, the plaintiff has been deprived of the quiet possession and enjoyment of said lands provided for in Article I of said Treaty of March 21st, 1866; and that defendant, well knowing the facts as above set forth, has failed, neglected and refused [fol. 11] to put plaintiff in possession of same, and therefore is liable for the damage resulting to plaintiff from defendant's failure to perform properly its obligations under said Act of February 28th, 1902, and said Treaty of 1866.

PLAINTIFF'S THIRD CAUSE OF ACTION

For its third cause of action plaintiff states:

I

That plaintiff restates and repleads Paragraphs I and II of its first cause of action, and Paragraphs II and III of its second cause of action.

II

That Section 15 of the Act of February 28th, 1902 (32 Stat. 43), provides in part as follows:

"Sec. 15. That before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in the preceding section, full compensation for such right-of-way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands, and to the tribe or nation through or in which the same is situated."

III

That plaintiff is informed and believes and therefore [fol. 12] avers that no such compensation for said lands of the Seminole National Domain, appropriated under the provisions of said Section 15, was ever paid by said railroad companies.

IV

That Section 16 of said Act of February 28th, 1902, provides in part as follows:

"Sec. 16. That where a railroad is constructed under the provisions of this Act there shall be paid by the railway company to the Secretary of the Interior, for the benefit of the particular tribe or nation through whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile for each mile of road constructed, the same to be paid so long as said lands shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise provided herein."

V

That plaintiff is informed and believes and therefore avers that said annual charge of fifteen dollars per mile for each mile of road constructed has never been so paid in full to date by said railroad companies to the Secretary of the Interior, for the benefit of said Seminole Nation.

VI

That the Seminole Nation has owned and occupied and now so owns and occupies the lands constituting said rights-

of-way; that plaintiff is informed and believes and there-
[fol. 13] fore avers that defendant, in violation of its obligations under said Act of February 28, 1902, and under said Sections 15 and 16 thereof, has failed, neglected and refused to collect the compensation provided therein for the benefit of the plaintiff; that defendant has never accounted to the plaintiff in full to date for said compensation, thus depriving plaintiff of the benefits provided therein; and therefore defendant is liable to plaintiff for defendant's failure to perform properly its said obligations.

PLAINTIFF'S FOURTH CAUSE OF ACTION

That for its fourth cause of action the plaintiff states:

I

That plaintiff restates and repleads Paragraphs I to VIII of its first cause of action and Paragraphs II to VI of its second cause of action.

II

That Section 11 of the act approved April 26, 1906 (34 Stat. 137), states in part, as follows:

"Sec. 11. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes, * * * shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him, * * *"

[fol. 14]

III

That under said Section 11 it became the duty of defendant to collect the rents and profits derived from plaintiff's lands, but that in violation of its duties the defendant permitted said railroad companies to rent plaintiff's lands unlawfully intruded upon, and to collect said rents and profits and to convert same to their own uses, thus depriving plaintiff of the benefits thereof; and for said failure, neglect and refusal of defendant to perform its said duties, defendant became liable to plaintiff for the amounts of said rents and profits, and that defendant has never accounted to plaintiff for the amounts of same.

PLAINTIFF'S FIFTH CAUSE OF ACTION

That for its fifth cause of action, the plaintiff states:

I

That plaintiff restates and repleads Paragraph I of its first cause of action.

II

That plaintiff restates and repleads all of the unlawful and unauthorized acts of said railroad companies and the wrongs perpetrated by same upon the plaintiff, known to and unlawfully permitted by the defendant, and all facts relative thereto, as set forth in plaintiff's first, second, third and fourth causes of action.

[fol. 15]

III

That Section 18 of the Act of Congress, approved April 26, 1906 (34 Stat. 137), provides in part, as follows:

"Sec. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the * * * Seminole * * * tribe * * * for the collection of any moneys or recovery of any land claimed by * * * said tribe * * * and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits."

IV

That although said facts as herein set forth were well known to defendant for many years, yet in violation of its express duties under said Section 18 of said Act of April 26, 1906, it has failed, neglected and refused to bring suits for the collection of the moneys due from said railroad companies, or for the recovery of the lands wrongfully intruded upon and claimed herein by the Seminole Nation, although often requested by plaintiff so to do; that by defendant's failure, neglect and refusal to perform its said duties under said Section 18, it became liable to the plaintiff for the com-

[fol. 16] pensation and the value of said lands of which the plaintiff has been so unlawfully deprived.

V

That at all times mentioned herein the plaintiff has had no redress, or now has the means or the right to recover in its own name said lands thus intruded upon, or to so collect the said compensation to be paid for the benefit of plaintiff as herein set forth, except through the action of the United States.

Wherefore, the premises considered, plaintiff prays:

1. That under plaintiff's first and second causes of action defendant be required to account for the lands of said "station reservations" so unlawfully intruded upon, and that judgment be entered against the defendant for the full present value of same.

2. That under plaintiff's third cause of action defendant be required to account for the collection of said compensation for the benefit of plaintiff as therein set forth, and that judgment be entered against defendant for the amounts found to be due plaintiff which were not so collected by defendant.

3. That under plaintiff's fourth cause of action defendant be required to account for the rents so collected by said railroad companies which defendant unlawfully permitted [fol. 17] to be misappropriated and diverted from the funds of plaintiff, and that judgment be entered against the defendant for its failure to so collect the amounts of said rents and profits.

4. That under plaintiff's fifth cause of action defendant be required to account for the lands and moneys of which plaintiff has been so unlawfully deprived because of the failure, neglect and refusal of defendant to file and prosecute suits to recover same for the benefit of the plaintiff, and that judgment be entered against defendant for the full present value of said lands, and for the amounts of money so found to be due plaintiff.

5. That on all of said items due plaintiff, interest be allowed at the rate of six per cent from the dates of said unlawful acts so complained of herein.

The Seminole Nation, by E. J. Van Court, Its Attorney of Record. Of Counsel: J. B. Campbell, P. M. Nichols, E. L. Ewing.

[fol. 18] *Duly sworn to by E. J. Van Court. Jurat omitted in printing.*

[fol. 19] III. Demurrer to Amended Petition—Filed January 29, 1942, by Leave of Court

Now comes the defendant and demurs to each of the alleged causes of action in the amended petition separately, upon the grounds that (1) the allegations of neither of the alleged causes of action state facts sufficient to constitute a cause of action against the defendant, and (2) the Court has no jurisdiction over the subject matter of either of the alleged causes of action, because no facts are alleged in either thereof which state a claim arising out of any treaty, agreement, or Act of Congress.

Defendant demurs to each of the alleged causes of action numbered four and five upon the additional ground that the claims attempted to be alleged therein are first stated in the amended petition which was not filed within the time specified in the Jurisdictional Act of May 24, 1924, 43 [fol. 20] Stat. 139, as extended by the Joint Resolution of February 19, 1929, 45 Stat. 1229.

Respectfully submitted, Norman M. Littell, Assistant Attorney General. Raymond T. Nagle, Charles H. Small, Attorneys.

[fols. 21-22] IV: Argument and Submission of Case

On March 2, 1942, the case was argued and submitted on defendant's demurrer by Mr. Charles H. Small for defendant, and by Mr. Paul M. Niebell for plaintiff.

V. Order of Court Sustaining Defendant's Demurrer and Dismissing Petition

This case was submitted to the court on the defendant's demurrer to the plaintiff's petition as amended along with the case of The Creek Nation, No. F-369, this day decided; and the question in the two cases being the same, therefore, It Is Ordered this 1st day of June, 1942, on authority of

said Creek case that the demurrer be and the same is sustained, and the petition is dismissed.

By the Court.

Richard S. Whaley, Chief Justice.

[fols. 23-24] VI. JUDGMENT OF THE COURT—June 1, 1942

This case was submitted upon the defendant's demurrer to the plaintiff's amended petition; on consideration whereof the court is of the opinion that the demurrer is well taken:

It Is Therefore Adjudged and Ordered that the defendant's demurrer be sustained and that the petition be and the same is hereby dismissed.

[fol. 25] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 26] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 322

ORDER ALLOWING CERTIORARI—Filed October 19, 1942

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.